

## Message Text

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ACTION PM-04

INFO OCT-01 ARA-06 ISO-00 NSC-05 SP-02 SS-15 CIAE-00

INR-07 NSAE-00 L-03 AID-05 IGA-02 EB-07 ACDA-07 H-02

DHA-02 TRSE-00 DODE-00 IO-13 OMB-01 MC-02 /084 W

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R 212100Z SEP 76

FM AMEMBASSY SANTIAGO

TO SECSTATE WASHDC 1472

INFO USCINCSO

C O N F I D E N T I A L SECTION 1 OF 2 SANTIAGO 9219

EO 11652: GDS

TAGS: CI, MASS

SUBJ: CHILEAN NOTE ON INTERNATIONAL SECURITY ASSISTANCE

AND ARMS EXPORT CONTROL ACT OF 1976

REFS: (A) STATE 163805 (NOTAL); B(B) 75 SANTIAGO 4911

1. SUMMARY: IN A NOTE OF SEPTEMBER 17, THE GOC CITES AS DISCRIMINATORY AND UNJUST THE 1976 SECURITY ASSISTANCE ACT PROVISIONS ON CHILE. IT DECLARES THEM INCONSISTENT WITH THE 1952 BILATERAL MILITARY ASSISTANCE AGREEMENT AND AN ACT OF INTERVENTION IN CHILE'S INTERNAL AFFAIRS CONTRARY TO THE OAS CHARTER. NO REPLY IS REQUIRED, BUT THE EMBASSY BELIEVES THE USG SHOULD RESPOND WITH ITS OWN LOGAL INTERPRETATION. WE REQUEST APPROPRIATE INSTRUCTIONS. END SUMMARY.

2. FOREIGN MINISTRY DIRECTOR FOR INTERNATIONAL (POLITICAL) AFFAIRS PABLO VALDES SEPTEMBER 17 HANDED TO POLCOUNS NOTE NO. 15881 OF THE SAME DATE CONCERNING THE 1976 SECURITY ASSISTANCE ACT. THE NOTE REFERRED TO SECTION 406 OF THE ACT (REF A -- THE SECTION REGARDING ECONOMIC AND MILITARY ASSISTANCE TO CHILE), AND STATED THAT THE GOC FOUND THE SECTION "DISCRIMINATORY AND UNJUST." WITH REGARD TO MILITARY ASSISTANCE, THE GOC SAID, IT CONTRADICTED THE 1952 BILATERAL MILITARY ASSISTANCE AGREEMENT. MOREOVER, THE  
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SECTION WAS AN "ACT OF INTERVENTION IN THE INTERNAL AFFAIRS

OF CHILE" EXPRESSLY PROHIBITED BY ARTICLES 18 AND 19 OF THE OAS CHARTER. THE NOTE ADDRESSED THE SPECIFIC POINTS ON HUMAN RIGHTS MADE IN SECTION 406 (A) (2) OF THE ACT (PARA ONE REF A). IT CONCLUDED BY STATING THAT THE GOC BELIEVED THE USG "HAS NOT OBSERVED" THE PROVISIONS OF THE MILITARY ASSISTANCE AGREEMENT, AND BY REGRETTING THAT THE USG HAD NOT PAID DUE ATTENTION TO GOC EFFORTS TO PRESERVE HUMAN RIGHTS.

3. VALDES WAS VERY LOW KEY IN PRESENTING THE NOTE. HE COMMENTED ONLY THAT IT BASICALLY SEEMED TO BE PRO FORMA, SINCE IT ASKED FOR NO REDRESS. AN EMBASSY TRANSLATION OF THE NOTE FOLLOWS; COPIES OF THE ORIGINAL ARE BEING POUCHED TO ARA/AND/CH.

4. COMMENT: THE LONG REACTION TIME OF THE GOC TO THE PASSAGE OF THE SECURITY ASSISTANCE ACT OF JUNE 30, AND THE LOW KEY METHOD OF DELIVERING THE CHILEAN NOTE, INDICATE THAT IT IS INTENDED MAINLY FOR THE RECORD. THE GOC'S VIEW THAT A CUT-OFF OF AMERICAN MILITARY ASSISTANCE TO CHILE VIOLATES THE MILITARY ASSISTANCE AGREEMENT IS NOT NEW. WE HAVE NEVER ACCEPTED THE THESIS THAT THE U.S. CANNOT UNILATERALLY CURTAIL ITS MILITARY ASSISTANCE TO CHILE, IN PART OR IN WHOLE, IN ACCORDANCE WITH OUR CONSTITUTIONAL PROCEDURES AND LEGISLATION IN FORCE. (SEE MEMORANDUM DATED DECEMBER 10, 1975 SUBJECT: "U.S. OBLIGATIONS UNDER THE U.S.-CHILE MUTUAL ASSISTANCE DEFENSE AGREEMENT" FROM L/ARA-DAVID GANTZ TO ARA-AMBASSADOR RYAN.) HAVING SAID THIS, HOWEVER, WE THINK IT WOULD BE WORTHWHILE TO REEXAMINE THE POSITION IN THE LIGHT OF THE ABRUPT CUT-OFFS EXPERIENCED BY THE CHILEANS AFTER JUNE 30.

5. ACCORDINGLY, WE HOPE THE USG WILL REPLY TO THE NOTE IN ORDER TO MAKE OUR POSITION CLEAR. THIS WOULD SERVE TO COUNTERACT GOC PUBLIC STATEMENTS, NOTABLY REMARKS OF PRESIDENT PINOCHET IN HIS SPEECHES OF MARCH 11 (SANTIAGO 2008) AND SEPTEMBER 11. IN THE LATTER, A TANGENTIAL REFERENCE TO THE VIOLATION OF INTERNATIONAL LEGAL NORMS BY THE U.S. APPEARS TO REFER TO THE MILITARY ASSISTANCE CUT-OFF. A REPLY TO THE NOTE WOULD ALSO GIVE US AN OPPORTUNITY TO COMMENT ON THE DEFENSE IT PRESENTS RE THE GOC'S CURRENT HUMAN RIGHTS PRACTICES. CONFIDENTIAL

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6. INFORMAL TRANSLATION OF GOC NOTE:

"THE MINISTRY OF FOREIGN AFFAIRS PRESENTS ITS COMPLIMENTS TO THE EMBASSY OF THE UNITED STATES OF AMERICA AND REFERS TO THE TEXT OF THE LAW ON INTERNATIONAL SECURITY ASSISTANCE

AND RMS CONTROL PROMULGATED BY HIS EXCELLENCY, THE PRESIDENT OF THE UNITED STATES, ON JUNE 30, 1976.

"2. IN SECTION 406, ENTITLED 'LIMITATIONS ON ECONOMIC ASSISTANCE, MILITARY ASSISTANCE AND SALES AND CREDIT SALES FOR CHILE,' SAID LAW CONTAINS VARIOUS PROVISIONS RELATING TO ECONOMIC AND MILITARY ASSISTANCE FROM THE UNITED STATES OF AMERICA TO CHILE.

"3. THE GOVERNMENT OF CHILE FINDS ITSELF OBLIGED TO BRING TO THE ATTENTION OF THE EMBASSY OF THE UNITED STATES OF AMERICA THE UNUSUAL SERIOUSNESS OF THESE PROVISIONS, WHICH REPRESENT DISCRIMINATORY AND UNJUST TREATMENT TO THE COUNTRY. WITH REGARD TO MILITARY ASSISTANCE DESCRIBED IN SUB SECTION (A) OF AFOREMENTIONED ARTICLE 406, THEY CONTRADICT THE TERMS OF THE MILITARY ASSISTANCE AGREEMENT SIGNED BY CHILE AND THE UNITED STATES OF AMERICA IN SANTIAGO ON APRIL 9, 1952. (TIAS 2703, MUTUAL DEFENSE ASSISTANCE AGREEMENT). AND THEY SIGNIFY AN ACT OF INTERVENTION IN THE INTERNAL AFFAIRS OF CHILE EXPRESSLY PROHIBITED BY ARTICLES 18 AND 19 OF THE CHARTER OF THE ORGANIZATION OF AMERICAN STATES.

"4. PARA 1, OF THE FIRST ARTICLE OF THE MILITARY ASSISTANCE AGREEMENT, STATES: 'EACH GOVERNMENT WILL MAKE OR CONTINUE TO MAKE AVAILABLE TO THE OTHER, AND TO SUCH ADDITIONAL GOVERNMENTS AS THE PARTIES HERETO MAY IN EACH CASE AGREE UPON, SUCH EQUIPMENT, MATERIALS, SERVICES, OR OTHER MILITARY ASSISTANCE...'. (NOTE: SINCE THE PARAPHRASE IN PARAGRAPHS FOUR-SIX FOLLOWS THE AGREEMENT'S SPANISH TEXT, THE EMBASSY HAS USED THE ENGLISH TEXT.)

"5. PARA 5 OF THIS SAME FIRST ARTICLE EXPRESSLY PROVIDES THAT THOSE MATERIALS AND FUNDS DERIVED FROM ANY PROGRAM

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OF ASSISTANCE UNDERTAKEN BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA WILL NOT BE SUBJECT TO GARNISHMENT, ATTACHMENT OR OTHER LEGAL OR ADMINISTRATIVE PROCESS BY ANY PERSON, FIRM, ENTITY, CORPORATION, ORGANIZATION, OR GOVERNMENT.

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C O N F I D E N T I A L SECTION 2 OF 2 SANTIAGO 9219

"6. WITH REGARD TO MAINTENANCE IN FORCE, ARTICLE 11 ESTABLISHES THAT: '...(THIS AGREEMENT) SHALL CONTINUE IN FORCE UNTIL ONE YEAR AFTER THE RECEIPT BY EITHER PARTY OF WRITTEN NOTICE OF THE INTENTION OF THE OTHER PARTY TO TERMINATE IT,' AND FURTHER ON ADDS THAT 'NOTWITHSTANDING THE DENOUNCEMENT OR TERMINATION OF THIS AGREEMENT, THE PROVISIONS OF PARAGRAPHS 2, 3, 4, 5, AND 6 OF ARTICLE I WILL CONTINUE IN FORCE UNTIL THE PARTIES AGREE TO THE CONTRARY.'

"7. FROM THE FOREGOING IT CAN BE DEDUCED THAT THE MILITARY ASSISTANCE AGREEMENT, CONCLUDED AS A CONSEQUENCE OF THE INTER-AMERICAN TREATY OF RECIPROCAL ASSISTANCE, IS IN FULL EFFECT UNTIL CHILE AND THE UNITED STATES AGREE OTHERWISE.

"8. EVEN THOUGH DEALING WITH MATTERS WITHIN THE EXCLUSIVE JURISDICTION OF THE CHILEAN GOVERNMENT, THE MINISTRY OF FOREIGN AFFAIRS WISHES TO UNDERSCORE THE FOLLOWING IN REFERENCE TO THE PROVISIONS REGARDING THE LIMITATION OF ECONOMIC ASSISTANCE PRESCRIBED IN SUB SECTION B OF AFOREMENTIONED ARTICLE 406: (A) IN THE FIRST PLACE THE PRACTICE OF VIOLATING INTERNATIONALLY RECOGNIZED HUMAN RIGHTS DOES NOT EXIST IN CHILE. NOR IS TORTURE OR DENIGRATING TREATMENT OR PUNISHMENT PRACTICED. AND IN ORDER TO PREVENT POSSIBLE ABUSES IN THIS AREA, DECREE LAW NO. 1009 OF MARCH (SIC 8, 1975 AND SUPREME DECREE 187 OF 30 JANUARY 1976 HAVE BEEN PROMULGATED IN CHILE, CONFIDENTIAL

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THEREBY DEMONSTRATING THE CONCERN OF THE GOVERNMENT FOR HUMAN RIGHTS. THE PRESIDENT OF THE SUPREME COURT AND THE MINISTER OF JUSTICE HAVE REPORTED THAT THE PROVISIONS OF THESE DECREES ARE BEING FULLY COMPLIED WITH. THE FACT THAT TRIALS HAVE BEEN INITIATED AGAINST CERTAIN MEMBERS OF THE

ARMED FORCES FOR ABUSE OF POWER CONSTITUTES A DEMONSTRATION OF THE DISPOSITION OF THE GOVERNMENT TO RESPECT AND ENFORCE HUMAN RIGHTS IN CHILE. THE EMERGENCY SITUATION NOW OBTAINING IN CHILE HAS OBLIGED THE GOVERNMENT TO RESTRICT CERTAIN RIGHTS IN ORDER TO SAFEGUARD MORE IMPORTANT HUMAN RIGHTS, BUT THESE RESTRICTIONS HAVE BEEN IN STRICT COMPLIANCE WITH INSTITUTIONAL PROVISIONS. IN THIS RESPECT ONE SHOULD ALSO KEEP IN MIND THE EFFORTS MADE BY THE GOVERNMENT OF CHILE TO ACHIEVE INSTITUTIONAL NORMALIZATION, AS SHOWN BY THE GRADUAL LIBERATION OF STATE OF SIEGE DETAINEES, COMMUTATION OF SENTENCES OF THOSE CONVICTED BY MILITARY COURTS, THE CREATION OF THE COUNCIL OF STATE, THE NEW DRAFT LABOR CODE, ETC. (B) WITH RESPECT TO VISITS BY COMMISSIONS, IT MAY BE POINTED OUT THAT THE GOVERNMENT OF CHILE HAS RECEIVED THE INTERNATIONAL COMMISSION OF JURISTS, THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS AND OTHER INTERNATIONAL ORGANIZATIONS SUCH AS THE INTERNATIONAL RED CROSS, WHICH HAVE RECEIVED THE FULL COOPERATION OF THE GOVERNMENT OF CHILE AND PERIODICALLY SUBMIT REPORTS REGARDING THEIR VISITS WITH DETAINED PERSONS IN THIS COUNTRY. WITH REFERENCE TO THE WORKING GROUP NAMED BY THE UNITED NATIONS HUMAN RIGHTS COMMISSION, IT HAS NOT BEEN POSSIBLE TO CARRY OUT (SUCH A VISIT) BECAUSE PROCEDURAL AND JURISDICTIONAL MATTERS STILL ARE PENDING. THE COLLABORATION OF THE GOVERNMENT OF CHILE HAS BEEN DEMONSTRATED CLEARLY BY THE NOTES (SIC) THAT THE MINISTER OF FOREIGN AFFAIRS SENT TO THE PRESIDENT OF THE HUMAN RIGHTS COMMISSION ON APRIL 12, 1976. (C) WITH REGARD TO NOTIFYING FAMILIES OF DETAINEES ABOUT THE WHEREABOUTS OF THEIR RELATIVES, THE PROVISIONS OF AFOREMENTIONED SUPREME DECREE 187 ARE FULLY CARRIED OUT. IN CASES OF PREVENTIVE DETENTIONS UNDER THE STATE OF SIEGE WHERE NO CHARGES ARE PLACED AGAINST THE DETAINEES, IT SHOULD BE KEPT IN MIND THAT THESE DETENTIONS ARE MADE IN CONFORMITY WITH LEGISLATION IN EFFECT SINCE 1925, IN ACCORDANCE WITH THE PRINCIPLES AND NORMS APPLIED DURING STATES OF EMERGENCY THROUGHOUT THE WORLD, WITHOUT VIOLATING THE RIGHTS REFERRED TO IN ARTICLE 4 OF THE CONVENTION ON CIVIL AND POLITICAL RIGHTS. CONFIDENTIAL

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"9. FOR THE FOREGOING REASONS, THE GOVERNMENT OF CHILE BELIEVES THAT ON THIS OCCASION THE GOVERNMENT OF THE UNITED STATES OF AMERICA HAS NOT OBSERVED THE PROVISIONS OF THE MILITARY ASSISTANCE AGREEMENT SIGNED IN SANTIAGO ON APRIL 9, 1952. WITH REGARD TO LIMITATIONS ON ECONOMIC ASSISTANCE TO THIS COUNTRY, THE GOVERNMENT OF CHILE REGRETS THAT DUE ATTENTION HAS NOT BEEN PAID TO THE EFFORTS CARRIED OUT BY THE SUPREME GOVERNMENT TO ACHIEVE INSTITUTIONAL NORMALIZATION AND PRESERVE HUMAN RIGHTS IN THE COUNTRY -- PRIMORDIAL ELEMENTS OF THE PRINCIPLES INSPIRING THIS GOVERNMENT.

"COMPLIMENTARY CLOSE"

7. ACTION REQUESTED: APPROPRIATE LEGAL LANGUAGE FOR  
REPLY TO NOTE.  
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## Message Attributes

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**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** MILITARY ASSISTANCE, FOREIGN POLICY POSITION, DIPLOMATIC NOTES  
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**Draft Date:** 21 SEP 1976  
**Decaption Date:** 01 JAN 1960  
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**To:** STATE  
**Type:** TE  
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